



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

April 26, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7011 0110 0001 3590 6759

David Branecky
Environmental Administrator
Oklahoma Gas & Electric Company
P. O. Box 321
Oklahoma City, OK 73101

Re: Notice and Finding of Violation under the Clean Air Act
Muskogee and Sooner Generating Stations, Oklahoma

Dear Mr. Branecky:


Enclosed is a Notice and Finding of Violation (Notice) issued to Oklahoma Gas & Electric Company (OG&E) for their Muskogee and Sooner Generating Stations. This Notice is issued in accordance with Section 113(a) of the Clean Air Act (Act), 42 U.S.C. §7413(a).

We have determined that OG&E is violating Prevention of Significant Deterioration requirements under Section 165 of the Act, 42 U.S.C. § 7475; visible emissions provisions contained in Oklahoma Administrative Code 252:100-25-3 of the Oklahoma State Implementation Plan; and the Operating Permit requirements under Title V of the Act, 42 U.S.C. §§ 7661 – 7661e, at both their Muskogee and Sooner Generating Stations. Some of these violations arose from various projects undertaken by OG&E over the years; others are violations that are evidenced by the Continuous Opacity Monitors data provided by OG&E for each of these facilities.

The Environmental Protection Agency (EPA) is offering you an opportunity to confer with us about the violations cited in the Notice. The conference will give you an opportunity to present information on the specific findings of violations, and the steps to bring the facilities into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

EPA's contact in this matter is Lorraine Dixon. You may call her at (214) 665-7589 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,


John Blevins
Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Greg Fried, Acting Chief
Air Enforcement Division (2201A)
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Oklahoma City, OK 73101-1677

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6**

IN THE MATTER OF:)	CAA 06-2010-3307
)	
)	
Oklahoma Gas & Electric Company)	Proceedings Pursuant to
(OG&E))	Section 113(a)(1) and (a)(3) of the Clean Air Act,
Oklahoma)	42 U.S.C. §7413(a)(1) and (a)(3)
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NOTICE AND FINDING OF VIOLATION

Pursuant to Section 113(a) of the Clean Air Act, the U.S. Environmental Protection Agency ("EPA") issues this Notice and Finding of Violation ("Notice") to Oklahoma Gas and Electric Company ("OG&E") for alleged violations of the Clean Air Act ("Act"), 42 U.S.C. §§ 7401 *et seq.*, at its Muskogee and Sooner generating stations.

The authority to issue this Notice has been delegated to the Regional Administrator of the U.S. Environmental Protection Agency, Region 6, and redelegated to the Director, Compliance Assurance and Enforcement Division.

STATUTORY AND REGULATORY BACKGROUND

The Clean Air Act is designed to protect and enhance the quality of the Nation's air so as to promote the public health and welfare and the productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

A. The National Ambient Air Quality Standards

1. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1), provides that the statute is designed to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.

2. Section 108(a) of the Act, 42 U.S.C. § 7408(a), requires the Administrator of EPA to issue air quality criteria for each air pollutant, the emissions of which may endanger public health or welfare and the presence of which results from numerous or diverse sources, including stationary sources.

3. For each such "criteria" pollutant, Section 109 of the Act, 42 U.S.C. § 7409, subsequently requires EPA to promulgate national ambient air quality standards ("NAAQS") requisite to protect the public health and welfare.

4. Pursuant to the above requirements, EPA has identified sulfur dioxide (SO₂), particulate matter (PM), carbon monoxide (CO), nitrogen dioxide, and volatile organic compounds (VOC) as such pollutants, and has promulgated NAAQS for each pollutant. See 40 C.F.R. §§ 50.4 through 50.15.

5. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area. An area that cannot be classified due to insufficient data is "unclassifiable."

6. Under Section 110 of the Act, 42 U.S.C. § 7410, each state must adopt and submit to EPA for approval a State Implementation Plan (“SIP”) that provides for the attainment and maintenance of the NAAQS.

B. Generally Applicable Provisions Regarding New Source Review and Prevention of Significant Deterioration for Major Modifications

7. Pursuant to the Act, new and modified sources of pollution are required to undergo new source review (“NSR”), a permitting process that consists of the following two programs: a prevention of significant deterioration (“PSD”) program applying to areas of the United States that are classified as attaining air quality standards, 42 U.S.C. §§ 7470-7492; and a Nonattainment NSR program for areas classified as “nonattainment” of air quality standards, 42 U.S.C. §§ 7501-7515.

8. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the PSD of air quality in those areas designated as attaining the NAAQS standards. These requirements are designed to protect public health and welfare, to ensure that economic growth will occur in a manner consistent with the preservation of existing clean air resources, and to ensure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process.

9. Section 165(a) of the Act, 42 U.S.C. § 7475(a), specifically prohibits the construction and operation of a “major emitting facility” in an area designated as attainment or unclassifiable, unless a permit has been issued that comports with the requirements of Part C of Title I of the Act.

10. On June 19, 1978, EPA established regulations implementing the federal PSD program at 40 C.F.R. § 52.21. *See* 43 Fed. Reg. 26,403 (June 19, 1978). Since that time, the PSD regulations have been revised, with subsequent revisions incorporated under 40 C.F.R. § 52.21.

11. Under rules promulgated by EPA in 40 C.F.R. § 52.21, “PSD program” is defined as “the EPA-implemented major source preconstruction permit programs [under § 52.21] or a major source preconstruction permit program that has been approved by the Administrator and incorporated into the State Implementation Plan pursuant to § 51.166 of [Chapter 40] to implement the requirements of that section.” 40 C.F.R. § 52.21(b)(43) (1999).

12. According to PSD regulations, if a major stationary source located in an attainment area is planning to make a major modification, the source must first obtain a PSD permit. *See* 40 C.F.R. § 52.21(a)(2)(iii) (1999). To obtain a PSD permit, the source must, among other things, undergo a technology review and apply BACT; perform a source impact analysis; perform an air quality analysis and air modeling; submit appropriate information; and conduct additional impact analyses as required. *See* 40 C.F.R. §§ 52.21(j)-(r) (1999).

13. Section 161 of the CAA, 42 U.S.C. § 7471, provides that each SIP must include a PSD program. Accordingly, requirements for incorporating PSD regulations into SIP Approved programs were also promulgated, establishing requirements for “emission limitations and such other measures as may be necessary to prevent significant deterioration of air quality” that must be contained in each state implementation plan. *See* 43 Fed. Reg. 26,382. These regulations were originally codified under 40 C.F.R. § 51.24 (1979) and subsequently redesignated at 40 C.F.R. § 51.166. *See* 51 Fed. Reg. 40,661 (Nov. 7, 1986) (effective Dec. 8, 1986).

14. The applicable air quality regulations promulgated by the State of Oklahoma pursuant to the requirements of 40 C.F.R. § 51.166 have been incorporated into the State's implementation plan, the Oklahoma SIP, and subsequently have been approved by EPA.

15. Title 40, Section 52.21(b)(1)(i)(a) defines a "major stationary source" as any stationary source within one of 28 source categories which emits, or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation under the Act. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input are included among the 28 source categories. *See* 40 C.F.R. § 52.21(b)(1)(i)(a) (1999); *see also* Oklahoma Air Pollution Control Regulation (OAPCR) 1.4.4(b)(1)(B) (1983).

16. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of a regulated NSR pollutant. *See* 40 C.F.R. § 52.21(b)(2)(i) (1999); *see also* OAPCR 1.4.4(b)(2) (1983).

17. "Net emissions increase" means, in relevant part: the amount by which the sum of the following exceeds zero:

- (a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source . . . ; and
- (b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable.

See 40 C.F.R. § 52.21(b)(3)(i) (1999); *see also* OAPCR 1.4.4(b)(3)(A) (1983) and OAPCR 1.4.4(b)(22)(A) (1983).

18. "Significant" is defined in relevant part to mean, in reference to a net emissions increase or the potential of a source to emit (a) Nitrogen Oxide (NO_x)—a rate of emissions that would equal or exceed 40 tons per year (TPY), (b) SO₂—a rate of emissions that would

equal or exceed 40 TPY, (c) CO—a rate of emissions that would equal or exceed 100 tpy, and (d) VOC—a rate of emissions that would equal or exceed 40 TPY. *See* 40 C.F.R. § 52.21(b)(23)(i) (1999); *see also* OAPCR 1.4.4(b)(22)(A) (1983).

19. “Stationary source” means “any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.” 40 C.F.R. § 52.21(b)(5) (1999); *see also* OAPCR 1.4.4(b)(5) (1983).

20. “Building, structure, facility or installation” means “all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control)” 40 C.F.R. § 52.21(b)(6) (1999); *see also* OAPCR 1.4.4(b)(6) (1983).

21. “Construction” means “any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.” 40 C.F.R. § 52.21(b)(8) (1999); *see also* OAPCR 1.4.4(b)(8) (1983).

22. “Commence as applied to construction of a major stationary source or major modification” means that “the owner or operator has all necessary preconstruction approvals or permits and either has: (i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or (ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.” 40 CFR 52.21(b)(9).

23. “Begin actual construction” means, in relevant part, “in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.” 40 C.F.R. § 52.21(b)(11) (1999); *see also* OAPCR 1.4.4(b)(11) (1983).

(1) Applicable federal provisions requiring major modifications to obtain preconstruction permits for prevention of significant deterioration.

24. Subsection (i)(1) of Section 52.21 provides in relevant part that no major modification subject to the requirements in Section 52.21 “shall begin actual construction without a permit which states that the...modification will meet those requirements” provided in subsections (j) through (r) of Section 52.21. 40 C.F.R. § 52.21(i)(1) (1999).

25. Title 40, Section 52.21(k) provides that the owner or operator of a major modification shall show that the significant net emissions increase will not contribute to a violation of any NAAQS, and that the increase will not be in excess of any applicable maximum allowable increase over the baseline ambient air concentration. 40 C.F.R. § 52.21(k) (1999).

26. Title 40, Section 52.21(m) provides that the owner or operator of a major modification shall conduct and submit as part of a permit application an ambient air quality analysis for each air pollutant subject to regulation under the Act for which the major modification would result in a significant net emissions increase at the source. 40 C.F.R. § 52.21(m) (1999).

27. Title 40, Section 52.21(n) provides that the owner or operator of the major modification shall submit all information necessary to perform any analysis or make any determination required under 40 C.F.R. § 52.21. 40 C.F.R. § 52.21(n) (1999).

(2) Applicable federal provisions requiring major modifications to apply best available control technology (“BACT”) for prevention of significant deterioration.

28. Under Section 169 of the Act, 42 U.S.C. § 7479, “best available control technology” is defined in relevant part as:

an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis...determines is achievable for such facility through application of production processes and available methods, systems, and techniques....

42 U.S.C. § 7479(3).

29. Similarly, applicable federal regulations provide, in part, that “best available control technology” means:

an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under [the] Act which would be emitted from any proposed...major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such...modification through application of production processes or available methods, systems, and techniques....

40 C.F.R. § 52.21(b)(12) (1999).

30. The term “emission limitation” is subsequently defined in Section 302 of the Act, 42 U.S.C. § 7602, in relevant part, as:

a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuing basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under [the Act].

42 U.S.C. § 7602(k).

31. At all times relevant to the violations alleged below, the regulations promulgated under 40 C.F.R. § 52.21(j) provided that “a major modification shall meet each applicable emissions limitation under the [SIP] and each applicable emissions standard and standard of performance under 40 CFR parts 60 and 61.” 40 C.F.R. § 52.21(j)(1) (1999).

32. These same regulations promulgated under subsection (j) further provide that:

[a] major modification shall apply [BACT] for each pollutant subject to regulation under the Act for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

40 C.F.R. § 52.21(j)(3) (1999)

33. Accordingly, pursuant to 40 C.F.R. § 51.166(j), each state, including the State of Oklahoma, is required to incorporate provisions in its respective state implementation plan providing that each major modification applies the BACT requirements already required under 40 C.F.R. § 52.21(j).

(3) Applicable federal provisions requiring major modifications to obtain a permit to operate for prevention of significant deterioration.

34. At all times relevant to the violations alleged below, Title 40, Section 52.21(r) of the Code of Federal Regulations provides that:

[a]ny owner or operator who constructs or operates a...modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a...modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

40 C.F.R. § 52.21(r)(1) (1999).

35. Furthermore, under the rules promulgated under Title 40, Part 70 of the Code of Federal Regulations, each state is required to develop programs for issuing operating permits

for major stationary sources, including those covered by PSD requirements. *See* 57 Fed. Reg. 32,250 (July 21, 1992) (effective July 21, 1992).

36. Pursuant to these rules, “Part 70 sources must obtain an operating permit addressing all applicable pollution control obligations under the [SIP]...or other applicable provisions of the Act.” 57 Fed. Reg. 32,250. Accordingly, Section 70.1 requires that “[a]ll sources subject to [regulation under the CAA] shall have a permit to operate that assures compliance by the source with all applicable requirements.” 40 C.F.R. § 70.1(b) (2009).

37. Pursuant to 40 C.F.R. § 70.5(c)(8), in addition to providing a description of how the source will continue to comply with applicable requirements, Part 70 sources are also required to provide a description of how the source will achieve compliance with those “requirements for which the source is not in compliance.” 40 C.F.R. § 70.5(c)(8)(ii)(A) and (B).

38. The regulations promulgated under Section 70.6 further specify that each permit issued under Part 70 must incorporate various elements, including “those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.” 40 C.F.R. § 70.6(a)(1) .

C. Provisions Regarding Major Modifications Under New Source Review and Prevention of Significant Deterioration Applicable to Oklahoma

39. On February 13, 1980, EPA approved the State of Oklahoma Air Quality Control Implementation Plan PSD Program, which was later redesignated the Oklahoma SIP. 45 Fed. Reg. 09741. Numerous revisions and amendments to the Oklahoma SIP have been approved by EPA, and incorporated by reference into the Code of Federal Regulations.

See 40 C.F.R. § 52.1960 (providing a history of all actions taken by EPA and the state regarding the Oklahoma SIP).

40. On August 25, 1983, EPA approved Oklahoma's PSD program. *See* 48 Fed. Reg. 38,636 (Aug. 25, 1983) (noting that the approval took immediate effect); 40 C.F.R. § 52.1960(c); and 40 C.F.R. § 52.1929 (providing for the scope of PSD regulation by the state under the Oklahoma SIP). Pursuant to 40 C.F.R. § 52.1929, the requirements of 40 C.F.R. § 52.21 remain applicable to sources for which EPA retains enforcement authority, including those sources permitted by EPA prior to approval of the Oklahoma PSD program, and those sources located on lands over which Oklahoma lacks jurisdiction under the Clean Air Act. *See* 40 C.F.R. § 52.1929(a) and OAPCR 1.4.4(a). Pursuant to its PSD program, the State of Oklahoma issues permits governing the operation and construction of regulated facilities. 48 Fed. Reg. 38,636.

41. Oklahoma's PSD program is promulgated under Oklahoma Air Pollution Control Regulation (OAPCR) 1.4.1 – 1.4.4. *See* 40 C.F.R. § 52.1920(c) (2009); *see also* 48 Fed. Reg. 38,636. EPA has approved minor revisions to OAPCR 1.4, including PSD regulations under OAPCR 1.4.4. *See* 56 Fed. Reg. 33,717 (effective September 23, 1991) and 64 Fed. Reg. 60,685 (effective January 7, 2000).

(1) Applicable provisions in the Oklahoma SIP requiring major modifications to obtain preconstruction permits for prevention of significant deterioration.

42. The Oklahoma SIP requires that a facility obtain a permit “when the...modification of an existing source, results in a net increase in air contaminant emissions as the Commissioner determines appropriate.” OAPCR 1.4.1(c)(1) [relevant provision approved by EPA at 48 Fed. Reg. 38,635 (August 25, 1983)].

43. The Oklahoma SIP also provides that: “[n]o person shall cause or allow the ... modification of any source without first obtaining an authority to construct or modify from the Commissioner as to comply with all applicable air pollution rules and regulations, and not to exceed ambient air quality standards or applicable federal new source performance standards....” OAPCR 1.4.2 (a)(1) [relevant provision approved by EPA at 48 Fed. Reg. 38,635 (August 25, 1983)].

44. In addition to the requirements provided under 40 C.F.R. § 52.21(m), OAPCR 1.4.4(f)(1) provides that the owner or operator of a major modification shall conduct and submit as part of a permit application an ambient air quality analysis for each air pollutant subject to regulation under the Act for which the major modification would result in a significant net emissions increase at the source. OAPCR 1.4.4(f)(1)(B) [relevant provision approved by EPA at 48 Fed. Reg. 38,635 (August 25, 1983)].

45. In addition to the requirements provided under 40 C.F.R. § 52.21(k), OAPCR 1.4.4(f)(3) provides that the owner or operator of a major modification shall show that, at the time of start-up, the significant net emissions increase, in conjunction with other applicable emissions increases or reductions, will not contribute to a violation of any NAAQS, and that the increase will not be in excess of any applicable maximum allowable increase over the baseline ambient air concentration. OAPCR 1.4.4(f)(3) [relevant provision approved by EPA at 48 Fed. Reg. 38,635 (August 25, 1983)].

46. In addition to the requirements provided under 40 C.F.R. § 52.21(k), OAPCR 1.4.2(c) also provides that the applicant shall guarantee that all data included on the application is true and correct, while subsection (d) provides that the Commissioner will evaluate the permit application based on information applicant provides and other available

information. OAPCR 1.4.2(c), (d) [relevant provisions originally approved by EPA at 48 Fed. Reg. 38,635 (August 25, 1983) and amended at 56 Fed. Reg. 33,717 (July 23, 1991) (effective Sept. 23, 1991).

(2) Applicable provisions in the Oklahoma SIP requiring major modifications to apply BACT for prevention of significant deterioration.

47. The Oklahoma SIP provides that “best available control technology” means “the control technology to be applied for a major...modification is the best that is available as determined by the Commission on a case[-by-case] [sic] basis taking into account energy, environmental, costs and economic impacts of alternate control systems.” OAPCR 1.4.4(b)(12) [relevant provision approved by EPA at 48 Fed. Reg. 38,635 (August 25, 1983)].

48. In addition to above-mentioned federal statutory and regulatory requirements regarding the application of BACT for major modifications, the Oklahoma SIP similarly requires that any major modification subject to regulation under the Oklahoma SIP apply BACT, providing in relevant part that:

[a] major modification must demonstrate that the control technology to be applied is the best that is available for each regulated pollutant for which it would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

OAPCR 1.4.4(e)(2) [relevant provision approved by EPA at 48 Fed. Reg. 38,635 (August 25, 1983)].

(3) Applicable provisions requiring major modifications to comply with the Clean Air Act's Title V regulations.

49. Section 502(d)(1) of the Act, 42 U.S.C. § 7661a(d)(1), requires each state to develop and submit to EPA an operating permit program which meets the requirements of Title V. On March 6, 1996, EPA granted source category-limited interim approval of the Oklahoma Title V program. On November 30, 2001, EPA granted full approval of the

Oklahoma Title V program. 40 C.F.R. Part 70, Appendix A. Major stationary sources and other sources of air pollution covered by Title V are required to obtain an operating permit that includes emission limitations and such other conditions necessary to assure compliance with all applicable requirements of the Act. 42 U.S.C. §§ 7661a(a), 7661c(a).

50. Under 40 C.F.R. § 70.1(b), “all sources subject to [Title V] shall have a permit to operate that assures compliance by the source with all applicable requirements.” The term “applicable requirements” is defined in 40 C.F.R. § 70.2 to include “any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the [Clean Air] Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in [40 C.F.R. Part 52].”

51. Section 502(f) and 40 C.F.R. § 70.6(a) require all operating permits issued under Title V to include enforceable emission limitations and such other conditions as are necessary to assure compliance with “applicable requirements” of the Act and the requirements of the applicable SIP. “Applicable requirement,” defined at 40 C.F.R. § 70.2, includes any applicable PSD requirements.

52. C.F.R. § 70.5(a) requires any owner or operator of a source subject to the Title V program to submit a timely and complete permit application that contains information sufficient to determine the applicability of any applicable requirements (including any requirement to meet BACT pursuant to PSD), certifies compliance with all applicable requirements, provides information that may be necessary to determine the applicability of other applicable requirements of the Act, and contains a compliance plan for all applicable requirements for which the source is not in compliance.

53. 40 C.F.R. § 70.5(b) requires any applicant who fails to submit any relevant fact or who has submitted incorrect information in a permit application to promptly submit such supplementary facts or corrected information upon becoming aware of such failure or incorrect submittal.

D. Provisions Regarding Opacity under New Source Performance Standards (“NSPS”)
40 C.F.R. Part 60.

54. OG&E is subject to the Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 to -118; OAC, Air Pollution Control, Title 252, Chapter 100-1-1 to -47-14; and the following relevant rules and permits: Title V Operating Permit Nos. 2005-271-TVR (Muskogee) and 2003-274-TVR (Sooner) and NSPS 40 C.F.R. Part 60, Subpart A – General Provisions, §§ 60.1 - .19, and Subpart D – Standards of Performance for Fossil Fuel Fired Steam Generators For Which Construction Is Commenced After August 17, 1971, §§ 60.40 - .46, incorporated by reference at OAC 252:100, Appendix Q.

55. 40 C.F.R. § 60.11(d) requires “At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.”

56. 40 C.F.R. § 60.42(a)(2) limits PM emissions from any affected facility in terms of Opacity to no “greater than 20 percent opacity except for one six-minute period per hour of not more than 27 percent opacity.”

57. ODEQ Title V permits for the Muskogee and Sooner Generating Stations specifically limit Opacity emissions for coal-fired unit (separate stacks for each) in accordance with the specific limitation at 40 C.F.R. § 60.42(a)(2) as well as the general provisions found at 40 C.F.R. § 60.11(d), as incorporated into the approved Oklahoma SIP and Oklahoma Clean Air Act.

FACTUAL BACKGROUND

58. OG&E is a subsidiary of OGE Energy Corporation formed under the laws of the State of Oklahoma, with a mailing address of PO Box 321, Oklahoma City, Oklahoma 73101.

59. OG&E has owned and operated the Muskogee Generating Station since 1956, and the Sooner Generating Station since 1975. OG&E is an owner and operator of both Facilities within the meaning of Section 111(a)(5) of the Act, 42 U.S.C. § 7411(a)(5).

60. OG&E is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

61. At all time periods relevant to this Notice, the Muskogee Generating Station and the Sooner Generating Station were located in areas classified as attainment for the 8-hr ozone standard, 1-hr ozone standard, PM_{2.5}, PM₁₀, SO₂, CO, and NO_x.

62. The Muskogee Generating Station is a fossil fuel-fired electric utility steam generating station of more than 250 million Btu/hr heat input, and has the potential to emit more than 100 tons per year each of NO_x, SO₂, and PM.

63. The Sooner Generating Station is a fossil fuel-fired electric utility steam generating station of more than 250 million Btu/hr heat input, and has the potential to emit more than 100 tons per year each of NO_x, SO₂, and PM.

64. The Muskogee and Sooner Generating Stations each constitute a “major stationary source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

65. OG&E completed physical changes and/or changes in the method of operation at its Muskogee Generating Station Units 4, 5, and 6 and Sooner Generating Station Units 1 and 2.

VIOLATIONS

E. Violations of Prevention of Significant Deterioration Requirements

66. OG&E has made physical changes and/or changes in the method of operation at its Muskogee Generating Station Units 4, 5 and 6 and Sooner Generating Stations Units 1 and 2 which has caused a significant net emissions increases, as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i), and OAPCR 1.4.4 (b) (1) (C) and (b)(3) of SO₂, NO_x, PM, PM₁₀, and/or PM_{2.5}.

67. The projects at the Muskogee Generating Station Units 4, 5 and 6 and the Sooner Generating Stations Unit 1 and 2 each constitute a “major modification,” as that term is defined at 40 C.F.R. § 52.21(b)(2)(i) and OAPCR 1.4.4 (b)(2)(A).

68. For each of the modifications at the Muskogee Generating Station Units 4, 5 and 6 and the Sooner Generating Station Units 1 and 2, OG&E failed to obtain a PSD permit as required by 40 C.F.R. § 52.21(i)(1) and OAPCR 1.4.1(c)(1).

69. OG&E violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a) and 40 C.F.R. § 52.21(i)(1) and OAPCR 1.4.1 (c)(1) by constructing major modifications to existing major sources at the above-listed facilities without applying for or obtaining the PSD permits and operating the modified facilities with BACT limitations or going through appropriate PSD review, and by continuing to operate after major modifications without installing appropriate emission control equipment in accordance with a BACT analysis.

70. Each of the violations exists from at least the date of OG&E commencing actual construction of each modification and continues until the appropriate PSD permit is obtained and the necessary pollution control equipment is installed and operated.

71. See attached Appendix A for additional information regarding alleged violations in Paragraphs 67 through 70.

F. Violation of 40 C.F.R. § 60.11(d) for Compliance with Standards and Maintenance Requirements and Violation of 40 C.F.R. § 60.42(a)(2) Standard for Particulate Matter (PM).

72. OG&E has failed to maintain and operate the affected facilities and associated air pollution control equipment for the coal-fired units at both the Muskogee and Sooner Generating Stations in a manner consistent with good air pollution control practices for minimizing emissions, as required by 40 C.F.R. § 60.11(d) {NSPS General Provisions Subpart A}.

73. OG&E has failed to meet the PM standard expressed in terms of Opacity for Fossil-Fueled Steam Generators, as required by 40 C.F.R. § 60.42(a)(2) {NSPS Subpart D}.

74. See attached Appendix B for additional information regarding alleged violations in Paragraphs 72 through 74.

G. Violations of Title V Provisions

75. OG&E commenced actual construction for one or more major modifications at each Facility, as defined under the PSD regulations in the Oklahoma SIP. As a result, these modifications triggered the requirements to, inter alia, obtain a PSD permit establishing emissions limitations that meet BACT and operate in compliance with BACT. OG&E failed to meet these requirements.

76. ODEQ issued Title V Permits for the Muskogee and Sooner Generating Stations to OG&E, but current Title V Permits do not identify BACT requirements or other emissions limitations related to any of the modifications at either Facility.

77. OG&E failed to obtain a proper or adequate Title V operating permit for either the Muskogee Generating Station or the Sooner Generating Station that contained emissions limitations for NO_x, SO₂, CO, and VOC based upon a BACT determination at the time modifications were implemented. The OG&E thereafter has operated each Facility without meeting such limitations and without having an adequate operating permit that requires compliance with such limitations or contains a compliance plan for all applicable requirements for which the source is not in compliance.

78. OG&E has violated and continues to violate Sections 502(a), 503(c), and 504(a) of the Act, 42 U.S.C. §§ 7661a(a), 7661b(c), and 7661c(a), 40 C.F.R. §§ 70.5 and 70.6 and the Oklahoma Clean Air Act, 27A O.S. § 2-5-112.

79. OG&E is in violation of Special Condition 1 of ODEQ Title V Permit #2005-271-TVR for Muskogee Units 4, 5, and 6 and Special Condition 1 of ODEQ Title V Permit #2003-274-TVR, regarding excess Opacity emissions.

ENFORCEMENT AUTHORITY

80. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (3), provide that the Administrator may issue an administrative penalty order pursuant to Section 113(d), 42 U.S.C. § 7413(d), or bring a civil action pursuant to Section 113(b), 42 U.S.C. § 7413(b), for injunctive relief and/or civil penalties whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, inter alia, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); NSPS 40 C.F.R. Part 60; Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD provisions of the Oklahoma SIP. *See also* 40 C.F.R. § 52.23.

81. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C.

§ 3701, 40 C.F.R. § 19.4, and 74 Fed. Reg. 626 (Jan. 7, 2009) against any person whenever such person has violated, or is in violation of, inter alia, the requirements or prohibitions described in the preceding paragraph.

82. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

OPPORTUNITY FOR CONFERENCE

83. OG&E may, upon request, confer with EPA to present evidence bearing on this Notice, on the nature of the violations, and on any efforts OG&E may have taken or proposes to take to achieve compliance. OG&E has a right to be represented by counsel. A request for a conference must be made within ten (10) days of receipt of this Notice. The request for a conference or other inquiries concerning the Notice should be made in writing to:


Ms. Lorraine Dixon
Assistant Regional Counsel (6RC-EN)
U.S. EPA, Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

If you have any legal questions, please feel free to contact Ms. Dixon at (214) 665-7589.

EFFECTIVE DATE

84. This Notice shall become effective immediately upon issuance.

Dated APR 26 2011


John Blevins
Director
Compliance Assurance and
Enforcement Division

Appendix A

Summary Table of PSD Projects OG&E Muskogee & Sooner Generating Stations

Project Identifiers		Project Implementation
Units Modified	OG&E Project Numbers	Time Period
MK5 & MK4	11100 (P-11101)	1993 (02/12 - 06/03)
MK5	11003092	2002 (09/14 - 10/29)
MK4	11003535	2003 (09/18 - 10/26)
MK5	11003538, 11003537	2004 (04/03 - 06/09)
MK6	11003536, 11004081	2004 (10/16 - 12/21)
MK4	11004082, 11004083	2005 (02/11 - 04/22)
MK5	11004738	2005 (09/? - 10/28)
MK5	11004192, 11004643, 11005334	2005 (09/16 - 12/02)
SO1	32801	1994 (02/23 - 06/06)
SO2	11000975	1998 (10/10 - 10/31)
SO2	11003534	2004 (02/13 - 04/18)
SO1	11002605, 11004848, 11004850	2006 (01/27 - 04/07)
SO2	11003647, 11004882, 11005595	2006 (10/20 - 12/29)

Notes

MK# :: Muskogee Unit Number (i.e., 3, 4, or 5)

SO# :: Sooner Unit Number (i.e., 1 or 2)

Appendix B
Summary Table of Total Excess Emissions of 20% Opacity by Year/Quarter
(six-minute periods)

OG&E Generating Stations		2006			2007				2008				2009		Mean
		2nd	3rd	4th	1st	2nd	3rd	4th	1st	2nd	3rd	4th	1st	2nd	
Sooner	Unit 1						950	75	995	432	0	621	272	1007	544
	Unit 2						474	880	1201	1580	386	553	336	66	684.5
Muskogee	Unit 4	154	25	392	117	1,614	3,941	226	396	630				312	780.7
	Unit 5	308	9	496	874	1,988	734	953	1,272	1,479				2,816	1092.9
	Unit 6	828	675	42	2,577	496	394	283	1,552	314				1,504	866.5

NOTES: Data Evaluation by Oklahoma Department of Environmental Quality (ODEQ)
Values in Yellow highlight were verified with COMS data

